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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 742 OF 2004

The Commissioner of Income Tax ... Appellant

Versus

M/s. Nebula Chemicals Limited ... Respondent

WITH

INCOME TAX APPEAL NO. 755 OF 2004

The Commissioner of Income Tax ... Appellant

Versus

M/s. Nebula Chemicals Limited ... Respondent

Mr. B.M. Chatterjee with Ms. P.P. Bhosale for the Appellants.

Mr. Prakash Shah i/by P.D.S. Legal for Respondents.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: SEPTEMBER 18, 2007

P.C.:

. The substantial question of law in both the appeals read as under :

> "Whether the payment made to M/s. Pidilite Industries amounting to Rs.15,23,628/- for using their registered trade mark "Fevicol" even though M/s. Pidilite Industries have ceased to have any right in the trade mark because of continuous use of the same by the

assessee for a very long time is not a business expenditure liable for deduction for the purpose of computation of Income of the assessees?"

. The Assessing Officer has disallowed the same. In an appeal, the Commissioner allowed the appeal. The tribunal has dismissed the appeal against which the present appeal.

. On behalf of the appellant the learned counsel submits that the tribunal failed to take into consideration that the respondent was sister concern of the company which was owner of the trade mark "Fevicol". That the said sister company have permitted the respondents over the period of time to use the trade mark without charging any royalty. In these circumstances, it is submitted that the order passed by the Assessing Officer cannot be faulted with.

. There is no dispute that the owner of the trade mark is M/s. Pidilite Industries. There is no further dispute that they have not ceased to be owners. They entered into an agreement based upon which the respondents have to pay them royalty for the use of the trade mark on their sales turn over.

The A.O. because the company did not charge the assessee for some years, disallowed the amount of royalty paid. The Commissioner in Appeal considering the various contentions as urged, has reversed the findings of the Assessing Officer and allowed the appeal in favour of the assessee by accepting the agreement of the assessee with M/s. Pidilite Industries. The tribunal has considered the contentions as raised by Revenue and has dealt with the same in Paragraph 4 and 5 of the order. The Tribunal concurred with the findings and view taken by the C.I.G.T. (Appeal).

. In our opinion the finding is a concurrent finding of fact. Nothing has been drawm to our attention to show that there is any perversity. Hence, the question of law as farmed would not arise. Consequently, both the appeals are dismissed.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**